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UNION OF INDIA AND ORS.

v.

SADHA SINGH

OCTOBER 25, 1999

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[K.T. THOMAS AND M.B. SHAH, JJ.]

Code of Criminal Procedure, 1973 : Sections 5 and 433A

Army Act, 1950: Sections 69,177,179-190

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Life imprisonment—Premature release—Accused—Conviction under Section 302 IPC and Section 69 of Army Act—Life imprisonment—Actual imprisonment undergone for less than fourteen years—Direction for premature release by High Court—Remission of four years earned by accused in jail taken into account—Appeal by State before Supreme Court—Held, in the Army Act there is no specific provision similar to Section 433A of Cr. P.C. or contrary to it—Bar w/s 433A on release before completion of fourteen years held applicable—Accused to serve 14 years imprisonment excluding remission earned in jail.

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The respondent, convicted by the General Court martial for an offence under Section 302 IPC and under Section 69 of the Army Act, 1950, was awarded life imprisonment. He had not undergone actual imprisonment for 14 years. However, he filed a writ petition before the Punjab and Haryana High Court for his immediate release. Taking into account the remission of four years earned by him in the jail, the High Court directed his immediate release.

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Union of India preferred appeal before this Court.

Allowing the appeal, the Court

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HELD : In the present case, respondent was convicted under Section 69 of the Army Act, 1950 for the offence of murder. It is true that Army Act is a special Act *inter alia* providing for investigation, trial and punishment for the offences mentioned therein by a special procedure. Section 177 empowers the Central Government to make rules in respect of prisons and prisoners. Sections 177 and 190 provide for pardon, remissions and suspension of the sentence. There is no specific provision similar to Section 433A or contrary

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to it. Hence, Section 433A would operate in the field and a prisoner, who is undergoing sentence of imprisonment for life and is convicted for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under Section 433(1) Cr.P.C. to imprisonment for life, has to serve at least 14 years of imprisonment excluding remissions earned in jail. As the respondent has not completed 14 years of actual imprisonment, the order passed by High Court is quashed and set aside. [31-D-E; 32-C]

Maru Ram v. Union of India & Anr., [1981] 1 SCR 1196, relied on.

Ajit Kumar etc. v. Union of India, [1987] Supp. SCC 493, held inapplicable.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1099 of 1999.

From the Judgment and Order dated 22.9.98 of the Punjab and Haryana High Court in Cri. W.P. No.1752 of 1997.

Ashok Bhan and Arvind Kumar Sharma for the Appellants.

Ranjan Mukherjee, (A.C.) for the Respondent.

Ms. Rupinder Kaur Wasu and Rajiv Dutta for State of Punjab.

The Judgment of the Court was delivered by

SHAH, J. Leave Granted.

This appeal is filed against the judgment and order dated 22.9.1998 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Writ Petition No.1752 of 1997 filed by the respondent.

Respondent was awarded life imprisonment and dismissed from service by the General Court Martial after being tried for the offence under Section 302 I.P.C. and under Section 69 of the Army Act, 1950. He preferred a writ petition in the High Court for his immediate release from the imprisonment on the ground that he has undergone imprisonment exceeding 14 years. The High Court arrived at the conclusion that in view of the decision in *Ajit Kumar etc. v. Union of India*, [1987] Supp. SCC 493, the respondent would

A be entitled to remissions earned in the jail and thereby respondent spent total period of 15 years 8 months and 29 days of imprisonment which obviously exceeded 14 years. The Court, therefore, directed immediate release of the respondent. That order is challenged by filing this appeal.

B It has been pointed out by the learned counsel for the appellant that respondent has not undergone actual imprisonment for 14 years. Before the High Court, it was admitted that respondent had spent 11 years and 1 month in actual custody, 1 year 7 months and 29 days in pre-trial custody and has earned 4 years remission in the jail. It is, therefore, submitted that the order passed by the High Court is, on the face of it, against the provision of Section 433A Cr.P.C. and its interpretation given by this Court in the case of *Maru Ram. v. Union of India & Anr.*, [1981] 1 S.C.R. 1196.

C A Constitution Bench of this Court in *Maru Ram's* case (Supra) held that Section 433A, Cr.P.C. over-rides all other laws which reduce or remit the term of life sentence and mandates that minimum of 14 years of actual imprisonment should be undergone by convict where a sentence of life is imposed for an offence for which death is one of the punishments provided by law and remissions vest no right to release when sentence is for life imprisonment. The Court also reiterated that imprisonment for life lasts until the last breath and whatever be the length of remission earned, the prisoner can claim release only if the remaining sentence is remitted by the Government. The Court further negated the contention that Section 5 of Criminal Procedure Code saves all remissions, short-sentencing schemes as special and local laws and, therefore, they must prevail over the Code including Section 433A. For that purpose, Section 5 was referred to which is as under:

F “Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

G The Court observed that broadly speaking, the said Section consists of three components - (i) the Procedure Code generally governs matters covered by it; (ii) if a special or local law exists covering a certain area, such law will be saved and will prevail over the provisions in the Code (The short-sentencing measures and remission schemes promulgated by the various States are 'special and local laws'); and (iii) if there is a specific provision to the contrary, then that will over-ride the special or local law. After considering

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the submissions and decisions cited by the parties, the Court held thus:-

“The Criminal Procedure Code is a general Code. The remission rules are special laws but Section 433A is a specific, explicit, definite provisions dealing with a particular situation or narrow class of cases, as distinguished from the general run of cases covered by Section 432 Cr.P.C. Section 433A picks out of a mass of imprisonment cases a specific class of life imprisonment cases and subjects it explicitly to a particularised treatment. It follows that Section 433A applies in preference to any special or local law because Section 5 expressly declares that specific provisions, if any, to the contrary will prevail over any special or local law. We have said enough to make the point that ‘specific’ is specific enough and even though ‘special’ to ‘specific’ is near allied and ‘thin partition do their bounds divide’ the two are different, *Section 433A escapes the exclusion of Section 5.*”

In the present case, respondent was convicted under Section 69 of the Army Act, 1950 for the offence of murder. It is true that Army act is a special act *inter alia* providing for investigation, trial and punishment for the offences mentioned therein by a special procedure. Section 177 empowers the Central Government to make rules in respect of prisons and prisoners. Sections 179 to 190 provide for pardon, remissions and suspension of the sentence. There is no specific provision similar to Section 433A or contrary to it. Hence, Section 433 A would operate in the field and a prisoner, who is undergoing sentence of imprisonment for life and is convicted for an offence for which death is one of the punishments provided by law or where a sentence of death imposed on a person has been commuted under Section 433(1) Cr.P.C. to imprisonment for life, has to serve at least 14 years of imprisonment excluding remissions earned in the jail.

However, learned counsel for the respondent submitted that in the case of *Ajit Kumar* (Supra), this Court dealt with a similar question and held that prisoners, who have been convicted and sentenced by the General Court Martial under the Army Act and who have been lodged in civil prison, were not entitled to the benefit of set-off provided under Section 428 Cr.P.C. In that case, this Court held that in view of the provisions in the Army Act, which is a special enactment containing elaborate procedure for trial of the persons covered therein, prisoners, who have been convicted and sentenced by the General Court Martial under the Army Act are not entitled to get benefit of set-off under Section 428 of the Code. In the said case, the Court considered Section 167 of the Army Act, which provides that the term of sentence

- A** imposed by a Court Martial shall be reckoned to commence on the day on which the original proceedings were signed by the Presiding Officer or by the Officer holding the Court Martial as the case may be. In view of this specific provision, the Court held that benefit of Section 428 cannot be claimed by the person convicted under the provisions of Army Act. In our view, the said decision will have no bearing on the applicability of Section 433A Cr.P.C., as
- B** in the Army Act there is no specific or contrary provision covering the same area. Section 433A, Cr.P.C. is a special provision applicable to all the convicts, who are undergoing imprisonment for life as provided thereunder. For such convicts, it puts an embargo for reduction of sentence below 14 years of actual imprisonment. We would also mention that after the decision in *Ajit Kumar* (Supra), Army Act is amended (by Act No. 37 of 1992) and Section
- C** 169A is added, which is similar to Section 428 of Criminal Procedure Code.

In view of the above, as the respondent has not completed 14 years of actual imprisonment, the order passed by the High Court is quashed and set aside.

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The appeal is allowed accordingly.

T.N.A.

Appeal dismissed.